



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 02, 2022

IN THE MATTER OF:

Appeal Board No. 623334

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 623334, 623335 and 623336, the claimant appeals from the decisions of the Administrative Law Judge filed January 19, 2021, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 23, 2020 through August 9, 2020, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; charging the claimant with an overpayment of \$6,935.00 in benefits recoverable pursuant to Labor Law § 597 (4),

\$9,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020, and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$600.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 152 effective days and charging a civil penalty of \$2,480.25 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant lost her primary job, at a retail store, in

March 2020 as a consequence of the COVID-19 pandemic. She filed an unemployment insurance claim on April 5, 2020, effective March 16, 2020. She read the information online that said she was responsible for complying with all of the information in the Claimant Information Handbook. She read the portions of handbook online. She did not read the portion that stated that she had to report all work to the Department of Labor, including part-time work.

After she filed her claim, the claimant continued to work part time as a home health aide for the present employer. She worked five days per week each week from the week ending March 29, 2020 through the week ending August 9, 2020, except during the week ending April 12, 2020. During this period, her earnings per week ranged from a low of \$378.00 to a high of \$473.00.

Starting April 9, 2020, the claimant certified for benefits for each of the weeks from the week ending April 5, 2020 through the week ending August 9, 2020. She did not certify for benefits on April 8, 2020. When she certified each week, she reported that she worked zero days. For the week ending April 12, 2020, the claimant also certified that she received four days of vacation pay. For the period from the week ending March 29, 2020 through the week ending August 9, 2020, the claimant received \$6,935.00 in regular unemployment benefits, \$9,600.00 in FPUC benefits, and \$600.00 in LWA benefits. The claimant was not paid benefits for the week ending April 12, 2020.

OPINION: The credible evidence establishes that the claimant worked five days per week from the week ending March 29, 2020 through the week ending August 9, 2020, except during the week ending April 12, 2020. The claimant was not totally unemployed during the weeks when she worked. Accordingly, we conclude that the claimant is ineligible for benefits from March 23, 2020 through August 9, 2020.

The credible evidence further establishes that the claimant received \$6,935.00 in regular unemployment benefits, \$9,600.00 in FPUC benefits, and \$600.00 in LWA benefits for the period from the week ending March 29, 2020 through the week ending August 9, 2020. When she certified for benefits each week from the week ending April 5, 2020 through the week ending August 9, 2020, the claimant reported that she worked zero days. These certifications were factually false, as the claimant worked in each of the weeks she received benefits for. She did not receive benefits for the week ending April 12, 2020. Because the claimant was ineligible, the benefits she received were overpaid. The overpaid FPUC and LWA benefits are recoverable pursuant to federal law. The regular unemployment

benefits are recoverable with respect to each week when the claimant made a factually false certification. As there is no evidence that the claimant made a factually false certification with respect to the week ending March 29, 2020, however, the benefits paid to the claimant for that week are non-recoverable. Accordingly, we conclude that the regular unemployment benefits paid to the claimant for the week ending March 29, 2020 are non-recoverable, and all of the other benefits paid to her for the period from March 23, 2020 through August 9, 2020 are recoverable.

The credible evidence further establishes that the claimant knew that she worked during each of the weeks when she falsely certified to working zero days. Therefore, her false certifications constitute willful misrepresentations for purposes of the Unemployment Insurance Law. We are not persuaded by the claimant's contention that she did not know that she was required to report her part-time work, as the claimant acknowledges that she saw the webpage advising her that she was responsible for complying with the Claimant Information Handbook, and she was able to access the handbook online. If she had read the handbook completely, as she was required to do, she would have known that she was required to report all work to the Department of Labor. Still, we have no evidence that the claimant certified falsely with respect to the week ending March 29, 2020. In addition, the claimant certified that she received four days of vacation pay for the week ending April 12, 2020, and the claimant received no benefits for that week. Therefore, we find that the claimant did not make false certifications to obtain benefits for the weeks ending March 29 and April 12, 2020. Accordingly, we conclude that the claimant made willful misrepresentations with respect to the weeks ending April 5, 2020, and April 19 through August 9, 2020. This matter is referred to the Department of Labor for recalculation of the willful misrepresentation forfeiture penalty and civil monetary penalty.

DECISION: The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board No. 623334, the initial determination, holding the claimant ineligible to receive benefits, effective March 23, 2020 through August 9, 2020, on the basis that the claimant was not totally unemployed, is sustained.

In Appeal Board No. 623335, the initial determination, charging the claimant with an overpayment of \$6,935.00 in benefits recoverable pursuant to Labor Law § 597 (4), \$9,600.00 in Federal Pandemic Unemployment Compensation (FPUC)

benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$600.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), is modified to hold the regular unemployment benefits for the week ending March 29, 2020 non-recoverable, hold the regular unemployment benefits for the weeks ending April 5 through August 9, 2020 recoverable, and hold the FPUC and LWA benefits recoverable, and, as so modified, is sustained.

In Appeal Board No. 623336, the initial determination, reducing the claimant's right to receive future benefits by 152 effective days and charging a civil penalty of \$2,480.25 on the basis that the claimant made willful misrepresentations to obtain benefits, is modified to be effective with respect to the week ending April 5, 2020 and the weeks ending April 19 through August 9, 2020, and, as so modified, is sustained.

The willful misrepresentation forfeiture penalty and civil monetary penalty are referred to the Department of Labor for recalculation.

MARILYN P. O'MARA, MEMBER